

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JONATHAN MARCUS GREEN, §
§
Petitioner, §
§
v. § CIVIL ACTION NO. H-07-827
§
§
RICK THALER, Director, §
Texas Department of Criminal §
Justice-Correctional Institutions §
Division, §
§
Respondent. §

**ORDER GRANTING PETITIONER'S
MOTION FOR STAY AND ABEYANCE**

Jonathan Marcus Green is a Texas death row inmate. He is scheduled for execution tonight. Two days ago, Green filed a motion for a stay of execution and a petition for a writ of habeas corpus in anticipation of the denial of a similar motion in state court. He now asks this Court to stay his case because his state court motion is still pending in the Texas Court of Criminal Appeals.

“Because granting a stay effectively excuses a petitioner’s failure to present his claims first to state courts, stay and abeyance is only appropriate when the district court determines there is good cause for the petitioner’s failure to exhaust his claims first in state court. Moreover, even if a petitioner had good cause for that failure, the

district court would abuse its discretion if it were to grant him a stay when his unexhausted claims are plainly meritless." *Rhines v. Weber*, 544 U.S. 269, 277 (2005).

Green's claim that he is incompetent to be executed remains unexhausted only because the state court has not yet ruled. Green's motion and petition show that his claim is not plainly meritless and that he has good cause for a stay.

Accordingly,

IT IS ORDERED THAT Petitioner's Motion For Stay And Abeyance (Doc. # 31) is **GRANTED**;

IT IS FURTHER ORDERED THAT this case is **STAYED** pending resolution of Green's incompetency claim by the Texas state courts.

SIGNED at Houston, Texas, this 30th day of June, 2010.



Nancy F. Atlas
Nancy F. Atlas
United States District Judge